

Appl. No. 10/687,897
Docket No. CM2512C
Response dated November 30, 2010
Reply to Office Action mailed on August 31, 2010
Customer No. 27752

REMARKS

Claim Status

Claims 2, 5, 11, 12, 14, and 17-19 are pending in the present application.

Claims 1, 3, 4, 6, 9, 10, 13, 15, and 16 remain withdrawn as a result of an earlier restriction requirement.

Rejection Under 35 USC §103(a) Over Morris et al. (USPN 5,514,122) and Rose (USPN 5,609,587) in view of Grub et al. (USPN 5,266,592)

Claims 2, 5, 11, 12, 14 and 17-19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Morris et al. (US 5,514,122) and Roe (US 5,609,587) in view of Grub et al. (US 5,266,592). Applicants respectfully assert that the Office Action fails to establish a *prima facie* case of obviousness because none of the references, alone or in combination, disclose each and every element of the presently claimed invention. Further, even if, *arguendo*, a *prima facie* case were established, Applicants respectfully submit that Roe teaches away from Applicants' claimed invention. Therefore, Applicants respectfully traverse this rejection and request that this rejection be reversed.

Morris et al. relates to a feminine hygiene pad that seeks to eliminate the need for release liners by using an acrylic or acrylate pressure-sensitive adhesive matrix. (Col. 1, lines 55-59). As stated by the Office Action, Morris does not teach the limitation drawn to menthone glycerol ketal and triethyl citrate. (Action, page 6).

Applicants respectfully submit that Roe teaches a lotion coating comprising liquid polyol polyester(s) emollient, an immobilizing agent(s) for the liquid polyol polyester(s) emollient, optionally a hydrophilic surfactant(s), and other optional components. (Col. 10, lines 38-42). The Office Action relies on Roe to teach a plastic or fluid emollient such as mineral oil or petrolatum and equates the plastic emollient to triethyl citrate. (Action, page 7). However, the Office Action has not shown where Roe specifically teaches or gives a motivation to use triethyl citrate.

The presently claimed invention relates to a feminine napkin comprising a topsheet comprising an emollient-containing composition consisting essentially of from

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about 0.1% to about 99.9% of menthone glycerol ketal and from about 99.9% to about 0.1% of triethyl citrate.

The Office Action argues that Applicants' arguments are not persuasive because they are based upon amendments filed on August 16, 2010. Applicants respectfully submit that the Office Action notes that Applicants' submission filed on August 16, 2010, was entered (Office Action, page 2), and as such, the claims filed on August 16, 2010, are the currently pending claims subject to examination and Applicants' arguments were proper.

The Office Action further states that the "consisting essentially of" language in claim 2 does not distinguish from "comprising" language because they are both drawn to a closed range of "about 0.1% to about 99.9%." Applicants respectfully submit that the presently claimed invention includes an emollient composition consisting essentially of menthone glycerol ketal and triethyl citrate.

Furthermore, transitional phrases define the scope of the claim with respect to what unrecited additional components or steps, if any, are excluded from the scope of the claim. The transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. (*In re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976)). This is unlike "comprising" which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. (MPEP 2111.03).

As previously amended, claim 2 has been limited to the combination of menthone glycerol ketal and triethyl citrate by changing "comprises" to "consisting essentially of". The combination of these two materials (without other materials that materially affect the basic and novel characteristics of the invention) has not been shown in the prior art.

In addition, Applicants respectfully submit that Roe teaches away from Applicants' claimed invention. Specifically, Roe teaches that a "key component of the lotion compositions of the present invention is an agent capable of immobilizing the liquid polyol polyester emollient." (Col. 17, line 65 through Col. 18, line 2). In contrast, the claimed invention is directed to an emollient-containing composition that consists

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essentially of menthone glycerol ketal and triethyl citrate. While the Office Action argues that it would have been "obvious to try" the claimed invention based on Roe (Office Action, page 3), Applicants respectfully submit that the Office Action has provided no evidence that one ordinarily skilled in the art would have any expectation of success in choosing only menthone glycerol ketal and triethyl citrate, without the immobilizer as taught by Roe.

As such, Applicants respectfully submit that the Office Action has not set forth a *prima facie* case of obviousness with respect to claims 2, 5, 8, 11, 12, 14 and 17-19 and withdrawal of the rejection and allowance of the claims is respectfully requested.

Summary

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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